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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

THE PEOPLE,

Plaintiff and Respondent,

v.

PHILLIP OREN STARK,

Defendant and Appellant.

E054000

(Super.Ct.No. FSB901059)

OPINION

APPEAL from the Superior Court of San Bernardino County. Kyle S. Brodie,  
Judge. Affirmed.

John L. Staley, under appointment by the Court of Appeal, for Defendant and  
Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney  
General, Julie L. Garland, Assistant Attorney General, Scott C. Taylor and Meredith S.  
White, Deputy Attorneys General, for Plaintiff and Respondent.

## INTRODUCTION

Defendant Phillip Stark seeks remand for calculation of additional custody credits under Penal Code section 4019.<sup>1</sup> We will affirm.

## FACTS AND PROCEDURAL HISTORY

On October 30, 2009, defendant pled guilty to one count of residential burglary (§ 459). In exchange, the court dismissed two home robbery charges, one strike prior, and four prison prior allegations and sentenced defendant to the upper term of six years in state prison. The court awarded defendant a total of 342 days of custody credit: 228 actual days and 114 days of conduct credit. On April 24, 2011, defendant requested a recalculation of his custody credits pursuant to sections 4019 and 2933. On May 9, 2011, the trial court denied defendant's request.

## DISCUSSION

Defendant argues here that equal protection principles and the precedents of *In re Estrada* (1965) 63 Cal.2d 740 (*Estrada*) and its progeny require that the October 1, 2011, amendment to section 4019 must be applied retroactively to his case.

Defendant's arguments were considered in detail in *People v. Brown* (2012) 54 Cal.4th 314 (*Brown*). In a unanimous decision, the California Supreme Court stated unequivocally that section 4019 operates prospectively only and rejected defendant's *Estrada* argument and equal protection claims. (*Brown*, at pp. 323, 328, 330.)

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<sup>1</sup> All further statutory references are to the Penal Code.

Further, the high court explained that “To apply former section 4019 prospectively necessarily means that prisoners whose custody overlapped the statute’s operative date (Jan. 25, 2010) earned credit at two different rates. . . . Credits are determined and added to the abstract of judgment at the time of sentencing, but they are *earned* day by day over the course of a defendant’s confinement as a predefined, expected reward for specified good behavior.” (*Brown*, at p. 322.) As we review the record, it appears that that is how defendant’s conduct credits were calculated. There is no basis for remand to re-do what the trial court has already done correctly.<sup>2</sup>

#### DISPOSITION

The judgment is affirmed.

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CODRINGTON  
J.

We concur:

McKINSTER  
Acting P. J.

KING  
J.

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<sup>2</sup> In light of *Brown*’s extensive discussion of section 3, section 4019, section 2900.5, and the prospective nature of Penal Code provisions in general, we note that there is also no basis for a remand to the trial court for calculation of any section 2933 worktime credits. Those are to be calculated by the California Department of Corrections under regulations adopted by that agency and under the versions of the statute operative at various periods of defendant’s confinement. (§ 2933, subds. (a)-(e); *Brown, supra*, 54 Cal.4th at pp. 321-323, fns. 8 & 11.)